



COUNTY OF LOS ANGELES

CONTRACT CITIES LIABILITY TRUST FUND

CLAIMS BOARD

500 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012

MEMBERS OF THE BOARD

May 7, 2003

Curtis Morris
City Council Member
Dennis Courtemarche
City Manager
Jesse Duff
City Manager
Margaret Finlay
City Council Member
Jerome Groomes
City Manager
John McTaggart
City Council Member
Sam Olivito,
California Contract
Cities Association

Honorable Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: **James and Cindy Foy v. County of Los Angeles**
Los Angeles Superior Court Case No. BC 225 436

Dear Supervisors:

The Contract Cities Liability Trust Fund Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of \$200,000.00.
2. The Auditor-Controller be directed to draw a warrant to implement this settlement from the Sheriff's Department Liability Trust Fund -Santa Clarita.

Enclosed is the settlement request and a summary of the facts of the case.

Also enclosed, for your information, is the Corrective Action Report submitted by the Sheriff's Department.

Return the executed, adopted copy to Frances Lunetta, Suite 648 Kenneth Hahn Hall of Administration, (213) 974-1754.

Very truly yours,

Curtis Morris, Chair
Los Angeles County Contract Cities
Liability Trust Fund Claims Board

CM/fsl

Enclosures

MEMORANDUM

March 21, 2003

TO: THE COUNTY OF LOS ANGELES CONTRACT CITIES
LIABILITY TRUST FUND CLAIMS BOARD

FROM: Richard S. Kemalyan
Dwyer, Daly, Brotzen & Bruno, LLP

Johanna M. Fontenot
Principal Deputy County Counsel
General Litigation Division

RE: **James and Cindy Foy v. County of Los Angeles, et al.**
Los Angeles Superior Court Case No. BC 225436

DATE OF
INCIDENT: June 13, 1999

AUTHORITY
REQUESTED: \$ 200,000

COUNTY
DEPARTMENT: Sheriff's Department

CLAIMS BOARD ACTION:

☐

Approve

☐

Disapprove

☒

Recommend to Board of
Supervisors for Approval


MARGARET FINLAY

City Council Member


JOHN MC TAGGART

City Council Member


CURTIS MORRIS

City Council Member


DENNIS COURTEMARCHE

City Manager


JEROME GROOMES

City Manager


JESSE DUFF

City Manager


SAM OLIVITO

California Contract Cities Association

on May 7, 2003

SUMMARY

This is a recommendation to settle for \$200,000, a lawsuit filed by Cindy Foy alleging violation of civil rights, assault and battery, and negligence. The lawsuit arises from an incident occurring on June 13, 1999, at which time Sheriff's Deputies responded to a 9-1-1 hang-up call at Cindy and James Foy's residence.

LEGAL PRINCIPLES

A public entity and its employees can be liable for violation of civil rights for the use of excessive force beyond that which is reasonable for the circumstances. A person who proves a violation of their federal civil rights is also entitled to an award of attorney's fees.

SUMMARY OF FACTS

On June 13, 1999, Sheriff's Deputies responded to the home of Cindy Foy due to a 9-1-1 hang-up call with a woman screaming in the background. The Sheriff's Deputies believed that this was a dispute involving domestic violence. After arriving at the home, and knocking for approximately one minute, Cindy Foy answered the door. She appeared to have been crying, was frightened, and had red marks on her face with a laceration on her forehead. The first Sheriff's Deputy to enter the home had his gun drawn and at his side. The Sheriff's Deputy asked Cindy Foy where her husband was located, and Cindy Foy pointed toward a hallway.

At the time the Sheriff's Deputy rounded the entrance to the hallway, James Foy was standing adjacent to a bathroom. The Sheriff's Deputy could not see James Foy's right hand. When James Foy saw the Sheriff's Deputy, he declared words to the effect "I have one of those too," and began to move his right arm. At this time, the Sheriff's Deputy began to fire his gun as he backed down the hallway, across the foyer, and out the front door because he believed that Mr. Foy's arm movement was an attempt to retrieve a weapon.

Upon hearing the gunfire, the second Sheriff's Deputy also began to fire her weapon toward the entrance of the hallway. The two Sheriffs' Deputies ran into each other as they were backing out of the residence, causing the second Sheriff's Deputy to fall to the ground and accidentally shoot herself in the leg.

A third Sheriff's Deputy, who was responding as an assisting unit, saw the female Sheriffs Deputy on the ground. Therefore, the third Sheriff's Deputy ran across the lawn toward the fallen Deputy while firing one round at the open front door.

Cindy Foy was handcuffed for approximately five to ten minutes, and then transported to the station where she was interviewed. James Foy was arrested for spousal battery and assault with a deadly weapon on a peace officer. However, both charges were never filed because it was later determined that Mr. Foy did not fire a weapon and that there was insufficient evidence to support the spousal battery.

The Sheriff's Deputies in this case discharged twenty-seven rounds into the Foy's residence with shots going through the walls, into adjacent rooms, through windows, and out into the backyard. Shots were also fired into the front of the residence from outside the location. Several of the shots went directly over the head of Cindy Foy who was standing and observing the Sheriff's Deputies backing out of her home and firing their weapons. Each of the Sheriff's Deputies indicated that the firing of their weapons was done as "cover fire."

DAMAGES

As a result of the subject incident, Cindy Foy was diagnosed as suffering from a post traumatic stress disorder. Additionally, she had physical manifestations from the emotional distress, including heart palpitations, shortness of breath, difficulty sleeping, and intestinal disorders. Ms. Foy's claims total medical expenses of \$22,000 for psychological counseling and treatment for two years as a result of her emotional distress.

Cindy Foy also sustained loss of earnings from her usual occupation as an independent medical ultrasound technician. She is claiming an earnings loss of \$60,000 over the past three-years.

Cindy Foy is also claiming property damage. Although her homeowner's insurance carrier paid for most of the property damage, Cindy Foy claims that they did not compensate her for an additional \$5,000 necessary for home repairs.

The potential damages, should this matter proceed to trial, are as follows:

Medical Expenses	\$ 22,000
Lost Wages	\$ 60,000
Property Damages	\$ 5,000
Pain and Suffering	\$150,000
Federal Civil Rights Attorney's Fees	<u>\$200,000</u>
Total	\$437,000

STATUS OF CASE

James Foy and Cindy Foy each filed their own separate lawsuits and the two cases were consolidated. James Foy's lawsuit was dismissed by the court for failure to prosecute. Cindy Foy's lawsuit included substantial discovery and two mediation sessions. Her case was scheduled for trial on February 17, 2003, but the Court has vacated the date in order to allow the opportunity to present this settlement recommendation.

Defense costs to date include attorney's fees of \$38,538 and costs of \$10,812.19.

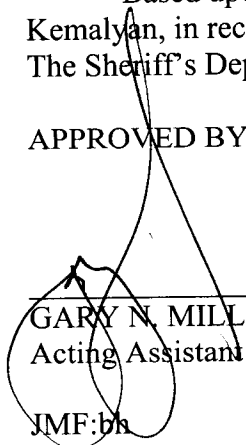
EVALUATION

The Sheriff's Deputies must provide an objectively reasonable basis for the firing of each round, and they may only utilize deadly force when they believe their lives or the lives of others are in danger. In this case, the Sheriff's Deputies have indicated that they were laying cover fire to back out of the house.

There is a potential for a verdict in excess of the proposed settlement in light of the fact, that although the first several rounds can be justified when they were shot toward James Foy in the hallway, the remaining rounds maybe difficult to justify because there was no indication that James Foy was pursuing the Sheriff's Deputies. A jury may find that it would have been more prudent to have requested Cindy Foy to step out of the house when the Sheriff's Deputies first arrived at the scene or to have taken her out of the house as the Deputies backed out through the residence while firing their weapons.

Based upon the above, we join with our private counsel, Richard S. Kemalyan, in recommending settlement of this matter in the amount of \$200,000. The Sheriff's Department concurs with the recommendation to settle this lawsuit.

APPROVED BY:



GARY N. MILLER
Acting Assistant County Counsel

JMF:bn

Los Angeles County Sheriff's Department

CORRECTIVE ACTION REPORT

LAWSUIT OF: James and Cindy Foy v. COLA,
Los Angeles Superior Court Case No. BC 225436

INCIDENT DATE AND TIME: June 13, 1999 , 12:27 AM

INCIDENT LOCATION: 25332 Via Telino, Santa Clarita, CA.

RISK ISSUES: A public entity and its employees can be held liable for a violation of civil rights for the use of excessive force beyond that which is reasonable for the circumstances. A person who proves a violation of their federal civil rights is also entitled to an award of attorney's fees.

INVESTIGATIVE REVIEW: On June 13, 1999, Sheriff's Deputies responded to the home of Cindy Foy because of a 9-1-1 hang-up call with a woman reported screaming in the background. The Deputies believed they were responding to a violent domestic dispute. After arriving at the home and knocking for approximately one minute, Cindy Foy answered the door. She appeared to have been crying, was frightened, and had red marks on her face and a laceration on her forehead. The Deputy asked Cindy Foy where her husband was, and Cindy Foy pointed toward a hallway. Believing this was a matter of imminent peril, the first Sheriff's Deputy entered the home with his gun drawn and at his side.

As the Sheriff's Deputy rounded the entrance to the hallway, he found James Foy standing adjacent to a bathroom but the Sheriff's Deputy could not see James Foy's right hand. When James Foy saw the Sheriff's Deputy, he stated words to the effect "I have one of those too" and began to move his right arm. The Deputy believed that Mr. Foy's arm movement, coupled with his statement, was an attempt to assault him with a firearm. Accordingly, the Deputy began to fire his gun as he backed away, down the hallway, across the foyer, and out the front door.

Upon hearing the gunfire, a second Sheriff's Deputy began to fire her weapon toward the mouth of the hallway to provide cover fire so her partner could escape the danger they perceived he was facing. As the first Deputy backed out of the living room he stepped in front of the second deputy. Realizing her partner was in front of her, the second deputy lowered her gun to the "ready position" to avoid firing at her partner. As the deputies continued to back out of the house, the second deputy tripped at the threshold of the house and fell backward. During her fall, the second deputy accidentally shot herself in the legs.



A third Sheriff's Deputy, who was responding as an assisting unit, saw the female Sheriff's Deputy down. As the third Sheriff's Deputy ran to the fallen Deputy he fired one round to provide cover fire for himself. He then rescued the fallen deputy and moved her to safety.

Thereafter, the location was contained with the Foy's still inside the house. Eventually, Cindy Foy was contacted via telephone and left the house. James Foy refused to leave the house until he became aware of the Special Weapons Team preparing to make entry into the house. Cindy Foy was handcuffed for approximately five to ten minutes and then transported to the station where she was interviewed. James Foy was arrested for spousal battery and assault with a deadly weapon on a peace officer; however, the District Attorney declined to file charges. It was determined that Mr. Foy did not fire a weapon, and there was insufficient evidence to support spousal battery.

The Sheriff's Deputies in this case discharged twenty-seven rounds into the Foy residence. Each of the Sheriff's Deputies indicated that the firing of their weapons was done as "cover fire."

TRAINING ISSUES: At the time of this incident, the Sheriff's Department provided training to its personnel on the use of deadly force. Sheriff's Deputies receive firearms training during their academy training, and must qualify with their firearms on a trimester basis. During academy training, deputies receive classroom training on the use of force and firearms. Further training on force and firearms is received during patrol school training, which lasts approximately 3 weeks. Each deputy assigned to a patrol station must successfully complete patrol school training before he or she is assigned to a patrol station.

To prepare deputies for shooting incidents, the Sheriff's Department provides simulated shooting scenarios to patrol deputies at the Laser Village Training Facility. At the time of this incident, the Sheriff's Department had a training curriculum in place that governed the use of deadly force, as well as detention and arrest. Deputies are trained to be aware of potential threats and their surroundings. Deputies are taught to have their fingers off the trigger of their pistols when they are not engaging a target to avoid accidental shootings.

POLICY ISSUES: Although there was no specific policy in place at the time of this incident involving cover fire, the use of cover fire is a proven and accepted police tactic and is now presented as part of the Department's training curriculum. Sheriff's Department policies are currently being written that will address the use of 'cover fire.'

CORRECTIVE ACTION: This matter was investigated by the Sheriff's Department's Homicide Bureau, and by the (then) Personnel & Training Division Response Team. Subsequently, an incident summary was presented to, and reviewed by, an Executive Force Review Committee consisting of three Commanders. The Committee determined that the force used by the deputies was within Departmental policy; therefore, no discipline was imposed on any deputies. The Committee also recommended that the deputies be commended for their heroic actions of rescuing an injured deputy while

under the perception that they were being fired upon. The involved deputies were thoroughly debriefed after the incident and their actions discussed with them.

At the time of this incident, the Sheriff's Department did not have any official training in place addressing the tactical use of cover fire. However, the use of tactical cover fire is now addressed in the Department's training curriculum, and is taught in the academy and patrol school. The use of cover fire in this incident aided in the successful rescue of a Deputy who was wounded, albeit by accidentally self inflicted gun shot wounds. The Department also continues to instruct and train it's personnel on the policies and procedures related to the use of force and deadly force. New policy is being developed to address the use of "cover fire."